

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 20, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 97-2009

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**STATE OF WISCONSIN EX REL.
PATRICK A. BAUGH,**

PETITIONER-APPELLANT,

V.

MICHAEL J. SULLIVAN,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County:
GEORGE NORTHRUP, Judge. *Affirmed.*

Before Dykman, P.J., Eich and Roggensack, JJ.

PER CURIAM. Patrick Baugh appeals from an order denying his petition for certiorari. The issue on appeal is whether the Secretary of the Department of Corrections properly determined that the typewriter Baugh

purchased is capable of storing text. Because we agree with the circuit court that the evidence supports this determination, we affirm.

Baugh, an inmate at Racine Correctional Institution, purchased a Canon StarWriter 30 word processing typewriter. After he purchased it, he was informed that the typewriter did not conform with Administrative Rule DOC 309, IMP #1-B, which prohibits typewriters which are “capable of storing text.” Baugh was ordered to send the typewriter out of the institution. Baugh immediately filed an inmate complaint.¹ The inmate complaint investigator called the Canon consumer information center which described the StarWriter 30 as a “word processor.” Since word processors are not allowed under Administrative Rule DOC 309, IMP #1-B, the investigator recommended dismissing Baugh’s complaint. The warden accepted that recommendation. Baugh then appealed the warden’s decision and the corrections complaint examiner also recommended that the complaint be dismissed. The Secretary of the Department of Corrections’ designee accepted the CCE’s recommendation for dismissal.

On certiorari, the reviewing court is limited to determining whether (1) the agency stayed within its jurisdiction, (2) it acted according to law, (3) the action was arbitrary, oppressive or unreasonable and represented the agency’s will and not its judgment, and (4) the evidence was such that it might reasonably make the order or determination in question. *See State ex rel. Braun v. Krenke*, 146 Wis. 2d 31, 37, 429 N.W.2d 114, 117 (Ct. App. 1988). “The test on certiorari

¹ Prior to having the typewriter sent to the institution, Baugh was told by the property sergeant for the institution that the unit complied with Administrative Rule DOC 309, IMP #1-B. When the unit arrived at the institution, the property sergeant engraved it with Baugh’s institution number and marked it as approved for inmate use. About a month later, Baugh was informed that it was not approved.

review is the substantial evidence test. The test is whether reasonable minds could arrive at the same conclusion reached by the Department.” *Id.* at 38, 429 N.W.2d at 117 (citation omitted). Certiorari review is not *de novo*, and the facts found by the agency are conclusive if supported by “any reasonable view” of the evidence. *State ex rel. Whiting v. Kolb*, 158 Wis. 2d 226, 233, 461 N.W.2d 816, 819 (Ct. App. 1990) (citation omitted).

Administrative Rule DOC 309, IMP #1-B prohibits inmates from possessing typewriters that “have a memory bank or [are] capable of storing text.” Baugh argues that the typewriter is not capable of storing text because the text is stored on an inserted disk and not in the typewriter itself. The CCE found that the unit had the capability to store text: “It may require a contraband disk to do it, but the capability is there.” In other words, as the State argues, the fact that the typewriter has a disk drive makes it capable of storing text.

The evidence in the record included letters from Canon U.S.A. and from ACE Business Machines, Inc. The letter from ACE Business Machines stated in part: “The Canon Star Writer 30 cannot store any document permanently unless you put a disk in the disk drive to store it.” The letters from Canon also indicated that the typewriter does not store memory on its own but requires a disk. This evidence, however, does not contradict the State’s position that the disk drive makes the unit capable of storing text. Since the evidence in the record supports the conclusion reached by the Secretary, we must affirm.

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

